STATE OF MICHIGAN

COURT OF APPEALS

In re J. D. WINGLE, Minor.

UNPUBLISHED
July 23, 2020

No. 351833
Monroe Circuit Court
Family Division
LC No. 18-024469-NA

Before: MARKEY, P.J., and M. J. KELLY and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his child, JW, pursuant to MCL 712A.19b(3)(c)(*i*) and (j). On appeal, his sole argument is that termination of his parental rights was premature because petitioner did not satisfy its statutory obligation to provide him with reasonable reunification services. We discern no clear error, however, in the trial court's finding that reasonable reunification services were provided. Accordingly, we affirm.

I. BASIC FACTS

In March 2018, JW, then eight years old, was living in a hotel with his mother, his half-siblings, and his mother's boyfriend. Child Protective Services initiated an investigation when it learned that there was no adult available to care for the children because the whereabouts of the children's mother was unknown and her boyfriend had been arrested on multiple felony charges. Following the investigation, petitioner filed a petition requesting that the court take jurisdiction of the children. The petition alleged that respondent—JW's putative father—was incarcerated and unable to provide proper care and custody for JW.

Although JW was nearly nine years old, respondent had never met him. Respondent requested and was granted a paternity test, which confirmed that he was JW's biological father. Thereafter, respondent entered a plea of admission, admitting that he was incarcerated, was unable to provide proper care and custody of JW, and that he had two other children currently in the foster care system. Based on his plea, the court took jurisdiction over JW and ordered respondent to comply with a case service plan.

Approximately 18 months after JW was removed and placed in foster care, petitioner concluded that limited progress had been made and the barriers to reunification continued to exist. Consequently, petitioner filed a petition to terminate respondent's parental rights. Following a termination hearing, the trial court terminated respondent's parental rights.[1]

II. REUNIFICATION EFFORTS

A. STANDARD OF REVIEW

Respondent argues that the trial court clearly erred by finding that the reunification efforts were reasonable. "We review the trial court's findings regarding reasonable efforts for clear error." *In re R Smith Minor*, 324 Mich App 28, 43; 919 NW2d 427 (2018). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.* (quotation marks and citation omitted).

B. ANALYSIS

MCL 712A.19a(2) provides that, absent aggravating circumstances, "[r]easonable efforts to reunify the child and the family must be made *in all cases* except if any of the following [aggravating circumstances] apply[.]"[2] In *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), our Supreme Court clarified that the state is not relieved of its statutory duty to make reasonable efforts to reunify a respondent-parent and his or her child simply because the respondent-parent is incarcerated. Rather, even when a parent is incarcerated, the parent is entitled to participate in

[1] The court also found statutory grounds to terminate JW's mother's parental rights and that termination of her rights was in JW's best interests. She has not appealed that decision.

[2] The statute sets for an exhaustive list of circumstances that relieve petitioner of the mandate to make reasonable reunification efforts. See MCL 712A.19a(2)(a)-(d). See also *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Rood*, 483 Mich 73, 99-100; 763 NW2d 587 (2009); *In re Hicks*, 500 Mich 79, 85; 893 NW2d 637 (2017). Although our Supreme Court has uniformly required reasonable reunification efforts in all cases save those with the aggravated circumstances identified in the statute, this Court has, on occasion, suggested that so long as petitioner is seeking termination at the initial disposition, there is no need to provide reunification services even in the absence of aggravating circumstances. See, e.g., *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009) ("Petitioner, however, is not required to provide reunification services when termination of parental rights is the agency's goal."); and *In re Moss*, 301 Mich App 76, 91; 301 NW2d 182 (2013) (Generally, reasonable efforts must be made to reunite the parent and child unless certain aggravating circumstances exist. However, the petitioner is not required to provide reunification services when termination of parental rights is the agency's goal.") (quotation marks and citation omitted). Here, as the parties agree that reunification efforts were required in this case, we need not explore whether *HRC* and *Moss* were correctly decided notwithstanding this apparent conflict with the above decisions of our Supreme Court and MCL 712A.19a(2), which expressly mandates that "[r]easonable efforts to reunify the child and family *must* be made in *all* cases except if any of the following [aggravating circumstances] apply[.]"

child protective proceedings and be offered the opportunity to benefit from his or her case service plan. *Id*. at 152-160. Where reasonable efforts toward reunification are required, but the petitioning agency has failed to allow the respondent a reasonable opportunity to participate in services, the result is a "hole" in the evidentiary record that renders termination of parental rights premature. See *id*. at 159-160.

Respondent compares his case to *Mason*. Yet, although both cases involve incarcerated parents, the situation in this case is distinguishable from that in *Mason*. In *Mason*, the trial court failed to secure the respondent's presence at hearings, thereby depriving him of any meaningful participation in the proceedings. *Id*. at 155. In contrast, in this case, respondent attended numerous hearings through the court's "polycom" video system. He was also transported from the prison so that he could be physically present for the termination hearing. Therefore, it is clear that, despite his continued incarceration, respondent was provided the opportunity to attend and participate in the court proceedings.[3]

In *Mason*, the petitioner completely "abandoned its statutory duties to involve [the respondent] in the reunification process." *Id.* at 146. The *Mason* caseworker admitted that the respondent could not comply with the case service plan while he was incarcerated, and it was unclear whether the respondent was even provided with a copy of it. *Id*. at 157. Here, on the other hand, the case service plan was provided to respondent, as were updated copies of it, which respondent signed and returned to his caseworker. Additionally, the plan was tailored to respondent's incarceration at a maximum-security prison. For example, the plan mandated that respondent comply with all the requirements and program stipulations of the prison; it required respondent to obtain employment in prison, if possible; to report any misconduct tickets or violations of prison rules within 48 hours to his caseworker; and to access the prison library for materials on parenting and substance abuse.

Respondent's testimony at the termination hearing demonstrates that he was fully aware of what was required by the case service plan. He also acknowledged that because he is in a maximum-security facility, there are limited programs and services available to him. Notwithstanding the limited nature of the services available, petitioner attempted to facilitate respondent's reunification with his child, but was thwarted by respondent's repeated failures to keep his caseworker informed. Again, respondent was provided with a copy of his initial case service plan and of updated copies of it. His caseworkers provided him with envelopes, stamps, and paper so that he could maintain contact with both his child and his caseworkers. When respondent ran out of stamps *and told his caseworker* that he was out, he was provided with more. He did not always tell his caseworker when he ran out of stamps. The letters to his child were to

[3] We note that, in addition to facilitating respondent's participation in the hearings, the court's video conferencing capabilities were used to further assist respondent in complying with the service plan. In December 2018, petitioner used the court's technology to arrange respondent's first meeting, albeit by video, with his son. Then, in March 2019, respondent met with his caseworker using the court's video polycom. During this meeting, they discussed, among other things, respondent's parenting time.

take the place of parenting time, which could not take place at the prison where respondent was housed. Respondent only wrote to his child four or five times. And despite being required to write his caseworker two times per month, he only wrote to his caseworker in this case four or five times.

Respondent did not inform his caseworker in this case that in order to receive a mental health assessment, he needed a referral from his caseworker. He did not notify his caseworker that he was employed at the prison within 48 hours as was required by the case service plan. He also wholly failed to apprise his caseworker of multiple misconduct tickets that he received in prison, including one major misconduct for fighting that could affect his release date. Respondent tried to obtain materials from the prison library on parenting and substance abuse, but when he discovered that such materials were unavailable, he did not tell his caseworker so that alternative services could be provided. Instead, he informed his caseworker that he had access to the prison library. His caseworker was also aware that respondent had received parenting materials from his caseworker in his other child custody case. Although respondent learned how to prepare a resume in his employment readiness program, and he actually created one, he never forwarded a copy to his caseworker. Similarly, respondent waited until the eve of the termination hearing to provide the caseworker with a copy of his written document outlining his future plans for housing, employment, childcare, and substance abuse treatment.

Despite the foregoing efforts to engage respondent in the proceedings and assist respondent in complying with the case service plan—and notwithstanding his failures to keep his caseworkers informed—respondent argues that petitioner could have done more. Respondent notes that his caseworkers never visited him at the prison to explain his case service plan. However, when the plan was sent to respondent, it was accompanied by comprehensive correspondence explaining the nature of the case and what was required of him. Further, respondent signed the plan and returned it to the caseworker. This action provided additional evidence that respondent understood the nature of his obligations. Moreover, during his testimony, respondent admitted that he knew what was required of him and, in particular, he understood that he was to maintain regular communication with his caseworker. Accordingly, contrary to respondent's position, petitioner did not simply provide respondent with a list of demands under the guise of a case service plan, and then fail to provide respondent with any assistance in understanding what was expected of him.

Respondent also takes issue with the fact that neither caseworker contacted the prison to inquire into any prison programs or services that might be available to him. However, respondent readily admitted that he was participating in every available program. Respondent completed an employment readiness program that taught resume writing, computer skills, and money management. He also recently became eligible for employment in the prison's food services. Respondent explained that as a term of his incarceration, he was required to take a substance abuse course. However, he acknowledged that he was on a wait list for this course and that pursuant to prison policy, he probably would not be eligible to take it until he was closer to his scheduled release date in August 2020. Again, respondent admitted that because he was in a maximum-security classification, there simply were no programs and services available to him. Respondent explained that when he was not working in the prison's food services, he was only allowed to be out of his cell for one hour a day. Moreover, he admitted that he was in maximum security because of his point assessment, which was a combination of his multiple incarcerations and the points he had earned for misconduct while incarcerated. Thus, even if the caseworkers had contacted the

prison about available services, it is unlikely that the results would have been any different because, as respondent explained, he was participating in all of the services for which he was eligible. Ultimately, only "reasonable" reunification efforts are required. See MCL 712A.19a(2). The fact that additional efforts may have yielded a different result, does not mean that the services provided were unreasonable. Here, under all the circumstances, we discern no clear error in the trial court's determination that reasonable reunification efforts were made.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ Mark T. Boonstra